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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re NICHOLAS T., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSEPH T.,

Defendant and Appellant.

D053273

(Super. Ct. No. SJ11940)

APPEAL from an order of the Superior Court of San Diego County, Cynthia A.

Bashant, Judge. Affirmed.

Joseph T. appeals an order declaring his minor son, Nicholas T., a dependent of the juvenile court under Welfare and Institutions Code¹ section 300, subdivision (e).

¹ Statutory references are to the Welfare and Institutions Code.

Joseph challenges the sufficiency of the evidence to support the court's findings denying visitation with Nicholas.

FACTUAL AND PROCEDURAL BACKGROUND

The San Diego County Health and Human Services Agency (Agency) filed a petition in juvenile court on behalf of three-month-old Nicholas under section 300, subdivision (e). The petition alleged that Nicholas suffered severe physical abuse inflicted by Joseph. Nicholas's left and right tibias had been fractured and were in different stages of healing. Nicholas also had three rib fractures. Nicholas's mother, Stephany M., admitted to seeing Joseph inappropriately handle Nicholas on at least three occasions. A child abuse expert opined Nicholas's injuries were nonaccidental in nature. Further, Joseph's explanations as to how the injuries occurred were not consistent with the nature and extent of the injuries. The police arrested Joseph and charged him with felony child abuse and sex with a minor.² The court held a detention hearing and detained Nicholas in out-of-home care.

The social worker discussed Nicholas's injuries with Joseph. Joseph denied hurting Nicholas and instead provided alternative explanations as to how Nicholas sustained his injuries. Joseph claimed he burped Nicholas too hard and that Stephany had fallen asleep while holding Nicholas and Nicholas fell to the floor.

² Stephany was 17 years old at the time she conceived Nicholas.

The social worker recommended against offering services to Joseph under section 361.5, subdivision (b)(5) and (6).³ The social worker noted Joseph confessed to the police that he had caused Nicholas's injuries. The report also reflected the opinion of the Children's Hospital child abuse expert noting that Nicholas's injuries were inconsistent with Joseph's explanations of inflicting accidental injury upon the child.

The court held an initial jurisdiction and disposition hearing in March 2008. Joseph remained in jail and the social worker reasserted her recommendation against offering reunification services to Joseph. Joseph's attorney requested that Joseph participate in an expert evaluation and the court continued the hearing.

Dr. O'Meara evaluated Joseph and submitted a report detailing the results. Dr. O'Meara noted Joseph had been defensive during the evaluation and he stated he had no explanation as to how Nicholas's injuries occurred. Joseph explained any injury to Nicholas may have been caused accidentally. Dr. O'Meara found Joseph's explanations

³ Section 361.5, subdivision (b) provides in part: "Reunification services need not be provided to a parent . . . described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] (5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian. [¶] (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. [¶] . . . [¶] A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body . . . by an act or omission of the parent"

to be "troublesome" and believed Joseph's ability to adequately care for Nicholas at this time was questionable considering Joseph's defensive nature regarding the abuse.

In an addendum report, the social worker reiterated services for Joseph were not likely to be successful because Joseph was incarcerated and he had not taken responsibility for harming Nicholas. Joseph initially admitted to injuring Nicholas but now claimed he did not hurt Nicholas intentionally.

The court held a contested jurisdiction and disposition hearing in June 2008. The court sustained the petition by clear and convincing evidence and found Joseph caused Nicholas's injuries. The court further found Nicholas's injuries were a result of multiple instances of abuse. The court denied Joseph reunification services under section 361.5, subdivision (b)(5) and (6). In addition the court found it would be detrimental to Nicholas to have contact with Joseph and denied visitation.

DISCUSSION

Joseph argues the court erred by denying him visitation with Nicholas at the jurisdiction and disposition hearing. Joseph asserts the court did not have sufficient evidence to support its finding visits would be detrimental to Nicholas.

A

The juvenile court defines a parent's right to visitation with a dependent child by balancing that right with the child's best interests. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) When a court terminates reunification services and sets a selection and implementation hearing, it must consider whether to permit a parent to continue visiting the child. (§ 366.21, subd. (h).) Visits must continue unless they are

detrimental to the child. (*Ibid.*) On appeal from an order denying visitation, we review the juvenile court's finding of detriment for substantial evidence. (*Ibid.*; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581; see also *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1238.)

B

Here, the evidence showed Joseph inflicted severe physical abuse on Nicholas. Nicholas suffered fractures to both his tibias and fractures to three of his ribs. The fractures of the tibias were in different stages of healing, indicating Nicholas had been abused more than once at different points in time. Joseph initially admitted to the social worker and the police to injuring Nicholas but later minimized the abuse by stating he accidentally hurt Nicholas. A child abuse expert's medical report indicated Nicholas's injuries were inconsistent with Joseph's statements concerning accidental injury. Joseph's psychological evaluation reported Joseph's explanations for the injuries were "troublesome" and Joseph would not be able to provide adequate care for Nicholas because he lacked maturity and minimized Nicholas's injuries. Under these circumstances, it was reasonable for the court to find visitation with Joseph would be detrimental given Nicholas's young age, the severe nature of the injuries, and Joseph's ongoing denial and untreated anger problems. The court had sufficient evidence to

support its finding that visitation between Nicholas and Joseph would be detrimental to Nicholas.⁴

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.

⁴ To the extent Joseph challenges the court's no contact order, in making visitation orders, the juvenile court must consider the child's best interests. (*In re Jennifer G.*, *supra*, 221 Cal.App.3d at p. 757; *In re Chantal S.* (1996) 13 Cal.4th 196, 201.) The court's orders regarding visitation may be reversed only upon a clear showing of an abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) Based on the severe physical abuse suffered by Nicholas at the hands of Joseph, it was not in Nicholas's best interests to have contact with Joseph. The court did not abuse its discretion by disallowing visitation.